IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Second Appeal No.37/2006

Office Notes, Memoranda of Coram, appearances, Court's orders or directions : Court's or Judge's orders and Registrar's orders.

CORAM : A.P. Lavande, J.
Dated : 21.4.2007.

Heard Mr. Khobragade, learned counsel for the appellant and Mr. Sirpurkar, learned counsel for the respondent.

By this appeal, the appellant takes exception to the judgment and decree dated 11.7.2005 passed by Additional District Judge, Khamgaon in Regular Civil Appeal No. 67/2000 dismissing the appeal filed by the appellant against judgment and decree dated 20.7.1998 passed by the Civil Judge, Senior Division, Khamgaon in Regular Civil Suit No.44/1996.

The appellant is original plaintiff who filed the above suit for specific performance of contract dated 16.8.1993 alleged to have been executed between the

plaintiff and the defendant in respect of the suit land. According to the plaintiff, the defendant agreed to sell the suit land by agreement dated 16.8.1993 for total consideration of Rs. 1,20,101/- , out of which Rs. 52,101/- was paid as earnest money. The defendant contested the suit and set up a case that there was loan transaction between the parties. The trial Court, upon appreciation of the evidence led by the parties held that the agreement was not proved nor the defendant had handed over the possession of the suit property as mentioned in the agreement. The trial Court also found that there was inter se variance between the evidence of the plaintiff and two witnesses examined by the plaintiff in support of his case. The plaintiff deposed that there were earlier two agreements in respect of the suit property entered into between the parties in 1991 and 1992. The plaintiff further deposed that he had paid Rs. 52,101/- to the defendant in the year 1991, Rs. 52,101/- to the defendant in the year

1992 and again in the year 1993 at the time of execution of agreement he had paid Rs. 52,101/- to the defendant. Thus, according to the plaintiff himself, he had paid Rs. 1,56,303/- to the defendant. Thus, this evidence is contrary to the pleadings of the plaintiff. The finding given by the trial Court that the plaintiff had not proved agreement has been confirmed by the lower Appellate Court. Upon a close scrutiny of the judgments given by both the Courts below, I find no perversity in the findings given by both the Courts below. It is settled law that grant of relief for specific performance is discretionary and unless the plaintiff establishes an agreement of sale, the plaintiff is not entitled to relief for specific performance. I do not find any perversity in the findings recorded by both the Courts below. In any case, no substantial question of law is involved in the second appeal. Hence, the appeal is summarily rejected.

C.A. No.333/06

Since the second appeal has been

rejected, nothing survives in the application. Hence, the application is rejected.

JUDGE A.